IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RA No.296 of 2008 in
CWP No.14003 of 2007
Date of decision : 19-09-2008

Sanjeev Kumar Varshney and Others

....Petitioner

VERSUS

Haryana Financial Corporation Ltd. and Others

....Respondents

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Sanjay Bansal, Senior Advocate
with Mr. Vinod Gupta, Advocate,
for the applicant/petitioners.

M.M.KUMAR, J.(ORAL)

This is an application seeking review of order dated 24-9-2007 passed by this Court in CWP No.14003 of 2007 while disposing of CWP No.15808 of 2006 along with CWP No.14003 of 2007. Although decision was rendered by extracting facts from CWP No.15808 of 2006 as the question of law was common. The review petition emerging from CWP No.14003 of 2007 was also disposed of specially when the petitioner placed reliance on the CWP No.15808 of 2006. This is explicit from the column 2(ii) of the index of the writ petition where following entry has been made by the petitioner:-

> 2.ii)Any other similar case: CWP No.15808/06 titled as Prem Kumar Vs. State of Haryana & others is pending for 24-9-2007."

The order dated 24-9-2007 passed by this Court was challenged before Hon'ble the Supreme Court by filing SLP No.9078 of 2003 while dismissing the Special Leave Petition as withdrawn, the petitioner has been given liberty to file review petition on the arguments that the question of limitation was argued before this Court but the said fact has not been considered. Their Lordships of the Supreme Court also noticed that there was no material to accept the aforementioned contention.

However, a perusal of the judgement rendered on 24-9-2007 patently shows that the question of limitation in CWP No.15808 of 2006 was considered and there was no argument raised by citing the fact from the instant petition. However on the insistence of the learned counsel for the petitioner we have taken up the question of limitation in the light of the facts of CWP No.14003 of 2007.

It is conceded position that the petitioner-Company has availed loan of Rs.24.69 lacs out of which a sum of Rs.21.88 lacs was disbursed by Haryana Financial Corporation to the company between 6-7-1995 and 6-3-1996. The mortgage deed was executed between the company and the respondent No.1 on 6-7-1995. The loan was payable in 14 half yearly instalments of Rs.1,76,000/- commencing from 1-12-1996 to 1-6-2003 with interest @17.5% per annum over and above the prevailing bank rate with half yearly rests. On account of non-payment of loan Haryana Financial Corporation-respondent No.1 took over the possession of the industrial unit in August 1997 which was later on sold for a sum of

Rs.14 lacs in December 1997. The Corporation became entitled to recover the remaining amount from the Home Land Pharmaceutical and Surgical Pvt. Ltd. as borrower and from petitioner No.1 to 3 as Directors-guarantors. On the receipt of auction money of Rs.14 lacs the petitioner has asserted that the Corporation could immediately initiate recovery proceedings against the petitioner after deducting the auction purchase within three years from the date of receipt of auction money.

The Corporation adjudicated the matter and an amount of Rs.22,87,174/- was found due. A certificate of recovery was sent to the Collector for effecting recovery from petitioners under Haryana Public Money (Recovery of Dues) Act 1979. On the basis of recovery certificate the revenue authorities-respondent No.3 issued summon to the petitioners for 17-9-2003 in which demand of Rs.22,87,174 was raised. The aforementioned action of the revenue authorities was challenged by the petitioner before this Court by filing CWP No.17987 of 2003 titled as Sanjeev Kumar Varshney and Others Vs. Haryana Financial Corporation Ltd. on the ground that recovery was time-barred. The aforementioned petition remained pending and it could be disposed of on 7-9-2006 by passing an order on the basis of the judgement of the Supreme Court rendered in the case of **Unique Tube Industry (P) Ltd. Vs. UT Financial Corporation (2003) 2 SCC 455** to the effect that the Corporation did not have power to recover the amount under the provisions of 1979 Act. On the basis of the aforementioned judgement, recovery certificate and

consequential proceedings were set aside and liberty was granted to the Corporation to proceed afresh as per law and petitioner was also allowed to raise any objection available to them. It was thereafter that on 31-1-2007, notice under Section 32(G) of the State Financial Corporation Act 1951 for determination of the sum due was issued.

In the light of the aforementioned facts it could not be concluded that the period spent in litigation from the issuance of recovery certificate till the date of the decision by this Court would count for the period of limitation and the recovery has become time-barred. Even otherwise the instalments were payable by the petitioners till 1-6-2003 and the recovery certificate was issued on 17-9-2003. The cause of action to the Corporation would arise on 1-6-2003 but on account of issuance of the recovery certificate the matter became subjudice when CWP No.17987 of 2003 was filed and was disposed of on 7-9-2006. There is no reason to accept the arguments that the claim made by the petitioner is barred by limitation. Therefore no ground for review is made out. The review petition fails and same is dismissed.

(M.M.KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

19th September, 2008
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